FREDERICK SIEMON

IBLA 71-45 Decoded June 8, 1972

Appeal from decision of Riverside district and land office rejecting application (R.2522) for quitclaim deed.

Affirmed.

Statutory Construction: Legislative History -- Act of July 6, 1960 -- Conveyances: Generally -- Lieu Selections

> An application for a quitclaim deed under sec. 6 of the Act of April 28, 1930, 43 U.S.C. § 872, based upon a conveyance to the United States of land as a basis for lieu selection, which conveyance was made pursuant to the Act of June 4, 1897, 30 Stat. 11, 36, is properly rejected because the Act of July 6, 1960, 74 Stat. 334, precludes the Department from utilizing the 1930 Act for that purpose.

APPEARANCES: Bennett Siemon, for appellant.

OPINION BY MR. FISHMAN

Frederick Siemon has appealed from a decision of the Riverside district and land office, dated August 18, 1970, which rejected his application, filed under the Act of April 28, 1930, § 6 as amended, 43 U.S.C. § 872 (1970), 1/ for a quitclaim deed to certain lands within the Pine Mountain and Lake Zaca Forest Reserve, Ventura County, California. The area of the tract is 80 acres.

1/ This statute provides:

"Where a conveyance of land has been made or may hereafter be made to the United States in connection with an application for amendment of a patented entry or entries, for an exchange of lands, or for any other purpose, and the application in connection with which the conveyance was made is thereafter withdrawn or rejected, the Secretary of the Interior or such officer as he may designate is authorized and directed, if the deed of conveyance has been recorded, to execute a quitclaim deed of the conveyed land to the party or parties entitled thereto."

Appellant is the successor in interest of one J. J. Rapp, who deeded the lands to the United States in 1902 as a basis for a forest lieu selection, as was then permitted by the Forest Exchange Act of June 4, 1897 (30 Stat. 11, 36). Rapp's application was rejected by the Secretary of the Interior. At the request of the grantor, the deed and the abstract were returned to him.

The land office decision disallowed appellant's application on the ground that the Act of July 6, 1960 (74 Stat. 334), had removed the authority of the Department of the Interior to grant an application under the Act of April 28, 1930, for reconveyance of land which had been conveyed to the United States as the basis for an uncompleted forest lieu selection. 2/

Appellant argues that the deed from Rapp did not pass title to the Government, since Rapp's offer to make the exchange was never accepted and his deed was returned; that the 1960 Act, which affects only lands "relinquished or conveyed," does not apply to the instant situation, where there was, in appellant's view, no relinquishment or conveyance; and that therefore he is entitled to a quitclaim deed under the 1930 statute.

2/ Section 1 of the Act of July 6, 1960, applied to "the claim of any person who relinquished or conveyed lands to the United States as a basis for a lieu selection" in accordance with the Act of June 4, 1897, as amended and supplemented by the Acts of June 6, 1900 (31 Stat. 588, 614), March 3, 1901 (31 Stat. 1010, 1037), March 3, 1905 (33 Stat. 1264), and September 22, 1922 (42 Stat. 1067), and who had not received his lieu selection, a reconveyance of his lands, or the authority to cut and remove timber. Upon application to the Department of the Interior within one year from the date of the Act, each such person holding a valid claim was entitled to receive from the United States as compensation for the lands conveyed the sum of $1.25 per acre, with interest thereon at four percent per annum, "from the date on which application was last made by said person for a lieu selection, for reconveyance, or for authority to cut and remove timber or, if no such application has been made, from the date of this Act."

Section 3 of the Act provided:

"The Act of September 22, 1922 (42 Stat. 1017; 16 U.S.C 483) is hereby repealed. No reconveyance of lands to which section 1 of this Act applies shall hereafter be made under section 6 of the Act of April 28, 1930 (46 Stat. 257; 43 U.S.C. 872)."

In Masonic Homes of California, 78 I.D. 312 (1971), a recent case involving a fact situation parallel to that presented in the case at bar, we held, after a review of the statutory background concerning forest lieu selections, that the Act of July 6, 1960, does remove the authority granted to the Department of the Interior by the Act of April 28, 1930, to reconvey lands which had been relinquished or conveyed to the United States as a basis for an uncompleted forest lieu selection. We find that case to be controlling on the issues involved herein.

There remains to be considered appellant's contention that no relinquishment or conveyance ever took place, and that hence the 1960 Act does not apply. In Masonic Homes, supra, appellant admitted that a relinquishment and conveyance had occurred, but argued that the return of the deed by the Government constituted a reconveyance. To this we answered that if appellant were correct, "then there would be no need for a quitclaim deed." Citing authorities, we pointed out that "[i]t is, however, generally recognized that the return of a deed to a grantor does not revest him with title." 78 I.D. at 316. By the same token, if no conveyance had been effected in the case before us, there would be nothing for the Government to quitclaim.

In Udall v. Battle Mountain Co., 385 F.2d 90 (9th Cir. 1967), cert. denied, 390 U.S. 957 (1968), the court recognized that an offer of base lands for a forest lieu selection, evidenced by a deed to the United States, is effective as a conveyance of the lands, even though the contemplated exchange may never take place.

We find that the conveyance to the United States of the lands in issue by appellant's predecessor in interest constituted the type of conveyance within the purview of the Act of July 6, 1960. That Act precludes the Department from granting to the appellant the quitclaim deed he seeks. With respect to appellant's argument that the 1960 Act results in a taking without compensation, this Board is not the proper forum to pass upon the constitutionality of a statute enacted by the Congress. Masonic Homes, supra, at 316.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F. R. 12081), the decision appealed from is affirmed.

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Frederick Fishman, Member

We concur:

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Anne Poindexter Lewis, Member

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Douglas E. Henriques, Member